

2002

# State of Utah v. Kelcey Willaims Cuch : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Appellee,

v

KELCEY WILLIAMS CUCH,

Defendant/Appellant

**BRIEF OF APPELLANT**

APPELLANT NOT IN CUSTODY  
PRIORITY 2

**Case # 20020048-CA**

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BRIEF OF APPELLANT

---

AN APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT, JURY  
CONVICTION OF ONE COUNT OF DRIVING UNDER THE INFLUENCE  
OF ALCOHOL, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH  
CODE ANN § 41-6-44, IN AND FOR ROOSEVELT COUNTY, STATE OF  
UTAH, THE HONORABLE A LYNN PAYNE PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

**FILED**  
Utah Court of Appeals  
JUN 14 2002  
Paulette Starn

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v.

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IN THE UTAH COURT OF APPEALS	
STATE OF UTAH,  Plaintiff/Appellee,  v.  KELCEY WILLIAMS CUCH,  Defendant/Appellant.	<b>BRIEF OF APPELLANT</b>  PRIORITY 2  <b>Case # 20020048-CA</b>

## BRIEF OF APPELLANT

### JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a Final Judgement and Commitment in the Eighth Judicial District Court, Roosevelt County, from a jury conviction of one count of Driving Under the Influence of Alcohol (DUI), a Third Degree Felony, sentenced before the Honorable Judge A. Lynn Payne, on December 6, 2001.

A jury convicted Mr. Cuch of the DUI charge and he was sentenced to zero to five years in prison and a \$1,000 fine. The sentence was stayed and Mr. Cuch was placed on probation with Adult Probation and Parole for thirty-six months. A Motion to Stay the sentence was filed by counsel and denied by the trial court.

This appeal is filed pursuant to Rule 27 of the Utah Rules of Criminal Procedure on the final judgement and commitment of the district court. This Court has jurisdiction to review the conviction pursuant to §58-37-8(2)(a)(i) and Rule 3(a) of the Utah Rules of Appellate Procedure and Utah Code 78-3a-909 (1996).

STATEMENT OF ISSUES PRESENTED ON APPEAL  
AND STANDARD OF APPELLATE REVIEW

There was insufficient evidence to support the conviction of Driving Under the Influence of Drugs as the state failed to show that the police officer had evidence to show Mr. Cuch was driving in a manner that was unsafe.

“We reverse the jury’s verdict in a criminal case when we conclude as a matter of law that the evidence was insufficient to warrant conviction.” State v. Smith, 927 P.2d 649, 651 (Utah Ct.App.1996), cert. denied, 937 P.2d 136 (Utah 1997).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Any relevant text of constitutions, statutory provisions, or rules referenced in this brief and pertinent to the issues now before the court on appeal are contained herein or attached to this brief.

STATEMENT OF THE CASE

On March 8, 2001, defendant Kelcey Williams Cuch was charged with on count of Driving Under the Influence of Alcohol, a violation of U.C.A. § 41-6-44, alleging that on January 20, 2001 he was operating a motor vehicle with sufficient drugs in his body, or to a degree which rendered the defendant incapable of safely operating a vehicle (Record of District Court, Docket Entry #7).

A jury trial was held on October 2, 2001, in which the jury convicted Mr. Cuch of a Third Degree Felony DUI on the basis that Mr. Cuch had two previous DUI and/or Alcohol Related Reckless Driving convictions (R. 93, 92).

On December 6, 2001, after review of a Pre-sentence Investigation Report prepared by Adult Probation and Parole the trial Court sentenced Mr. Cuch to 180 days in jail with release to

an alcohol program after 120 days in custody (R. 99).

On December 17, 2001, trial counsel for Mr. Cuch filed a Motion to Stay Execution of Sentence (R. 104). The trial Court denied the Motion to Stay (R. 117). On January 3, 2002 trial counsel Karen Allen filed a Notice of Appeal (R. 115) and Julie George was appointed by the trial Court to pursue the appeal.

### STATEMENT OF THE FACTS

Utah Highway Patrol Trooper Luke Stradinger testified in trial that he was on patrol at 1:54 in the morning and located Kelcey Cuch in Roosevelt Utah at State Road 40, Mile marker 113 when he saw Mr. Cuch change lanes without signaling and saw that the rear license plate was not illuminated on Mr. Cuch's truck (Trial Transcript, Page 73-74).

Trooper Stradinger pulled behind the vehicle and activated his emergency lights to pull the car over. As the car was pulling over the trooper noticed the passenger throw something out the window (T. 75). The trooper also believed that Mr. Cuch took too long to pull the car over (T. 75). Inside the truck Kelcey Cuch was driving and the passenger was Jarred Murray (T. 76).

When the officer approached the car he smelled the odor of alcohol coming from the car. The trooper asked Mr. Cuch if he had been drinking. Mr. Cuch denied that he had been drinking but told the officer that the passenger Jarred Murray had been drinking (T. 77).

The officer had Mr. Cuch exit the vehicle and perform field sobriety tests which he passed (T. 77). Kelcey told the trooper that he did not know the name of the passenger but was only giving him a ride home (T. 78).

The passenger initially lied to the officers about his name and age. After questioning, his identity was discovered and the police found not only had he been drinking but that he had a state



wide warrant for his arrest (T. 80). The police then checked Mr. Cuch for warrants and found that he had a warrant and he was arrested (T. 80).

The police searched the vehicle and found a small baggie of marijuana in the passenger side door (T. 81). The officers went back and searched where the passenger threw something out of the window and they found a marijuana pipe (T. 82).

At this point the officer stated that he saw a slight driving pattern in Mr. Cuch's driving and was concerned about the pipe being freshly filled with marijuana so he performed Drug Recognition Evaluation tests on Mr. Cuch (T. 83).

Trooper Stradinger called trooper Marx, a certified D.R.E. expert to the scene and had him perform a test on Mr. Cuch, the test showed he was under the influence of drugs so he was arrested for Driving Under the Influence of Drugs (T. 83-84).

The trooper testified that he asked Mr. Cuch to take a blood test to confirm the use of marijuana but Mr. Cuch refused (T. 84). The trooper testified that Mr. Cuch stated he refused the test because he knew it would come up positive and that it would look bad (T. 87).

Mr. Cuch admitted, after Miranda, that he had left A.J.'s bar at 1:00 a.m. and agreed to give Mr. Murray a ride home (T. 88). Mr. Cuch denied being under the influence of drugs or alcohol at the time of the interview (T. 89). Mr. Cuch told the trooper that the marijuana and pipe belonged to Mr. Murray and Mr. Murray was charged with crimes pursuant to possession of the pipe and drugs (T. 92).

On Cross-examination the trooper admitted that he pulled Mr. Cuch over for the license plate illumination bulb being out (T. 94). The trooper also admitted that Mr. Cuch denied having been drinking that night and indeed, once he pulled Mr. Cuch out of the truck the odor of alcohol

was gone (T. 94).

The trooper did not ever indicate in his report—indeed he testified that he did not smell the odor of burnt marijuana or un-burnt marijuana in the truck (T. 97). He reiterated that the pipe and drugs were charged to Mr. Murray (T. 97).

Mr. Cuch performed a portable breathalyzer test and an intoxilizer test which showed he did not have alcohol in his system (T. 98). The trooper testified that the blood test would pick up any marijuana in Mr. Cuch's system even if he had smoked it up to 30 days or longer prior to the arrest (T. 99).

Trooper Troy Marx testified that he was called out to go to the police station to perform a Drug Recognition Evaluation test on Mr. Cuch. The test consisted of making sure he did not have alcohol in his system, that he had been given his Miranda warnings, finding out when he last ate, last slept, what his medical history consisted of, if he had physical defects, if he was on any medication, and then trooper Marx took a pulse (T. 114-115). Mr. Cuch had a pulse rate higher than normal but it was decreasing throughout the troopers tests (T. 116). Mr. Cuch did not have a nystagmus or involuntary jerking of the eyes (T. 116). The trooper noticed some body tremors in one test and failure to follow directions on the walk and turn test (T. 118-119).

The trooper checked Mr. Cuch's temperature (Mr. Cuch had indicated earlier he had a fever and thought he was getting sick) and pulse (T. 121). The trooper then checked Mr. Cuch's pupils when exposed to light and found them dilated and his eyes red (T. 122).

The trooper testified that when he confronted Mr. Cuch with the test results—that he was positive for marijuana—and asked Mr. Cuch to take a blood test, Mr. Cuch refused to do so (T. 124). Trooper Marx testified that Mr. Cuch admitted to him that he would have a “hot” or

positive test for marijuana as he had been breathing second hand smoke from his passenger and his friends earlier in the night (T. 124).

However, on cross-examination the trooper admitted that Mr. Cuch told him he had bad knees and took ibuprofen for the pain. He also admitted that he did not know that the troopers had earlier told Mr. Cuch that second hand smoke would show up in a blood or urine test (T. 132). He also admitted that someone being pulled over, interrogated and tested by police may have an elevated blood pressure and pulse (T. 129). The officer testified that of the nineteen times he has performed the test only one time did someone pass his tests (T. 134). The officer admitted that he had Mr. Cuch walking the heel to toe test at 2:00 a.m. without a marked line to follow (T. 138). The officer failed to note Mr. Cuch's hematoma in his eye (T. 139).

The officer testified that he was not an expert on second hand smoke—but that he doubted second hand smoke would indicate a positive DRE test result. He also testified that whether or not Mr. Cuch smoked marijuana or had inhaled second hand smoke, it was in his system and he was under the influence of it (T. 141).

Trooper Marx testified that Mr. Cuch being under the influence of Tylenol 3 would have the opposite effect of marihuana (T. 174). He testified that Mr. Cuch told him he was taking the codeine and ibuprofen and yet neither of those drugs showed up at all on the DRE test (T. 176). Finally, on re-direct, the trooper who had earlier testified he was not an expert on second hand smoke testified, “ It is my opinion that second hand smoke is not going to affect you at all.”(T.180).

Kelcey Cuch testified that he is twenty-three years old and although he drinks on occasion he does not use illegal drugs (T. 147). On the night of the arrest, Kelcey Cuch met Murray (the

passenger) and others at the A.J. bar and was the designated driver to take him home(T. 148). Murray and others wanted to use Cuch's truck to smoke pot (T. 148). The truck belonged to Cuch's mother and he did not want the group of boys to steal anything from his truck so he went with them and stayed outside the truck (T. 148). Cuch testified he did not drink and did not smoke pot on the night of his arrest (T. 149).

Cuch testified that his eye has a blood spot on it that irritates his eye and makes it red (T. 150). He testified that he takes ibuprofen for his knees and that he plays a lot of baseball that strains him (T. 151).

He testified that the night of the arrest he was in the inside lane and saw a car come up fast on him. He tried to change lanes quickly, forgot to signal, and had to wait for the other cars to move for him to be able to pull over once he saw the police (T. 152).

J.R. Oaks and Terrance Cuch, both police officers testified that Kelcey Cuch had two prior convictions for alcohol related reckless driving charges in the past six years (T. 217-224).

The jury returned a verdict of guilty finding that Mr. Cuch was driving under the influence of marijuana (T. 216), and that his conviction was a Third Degree Felony as he had two prior alcohol related reckless driving convictions in the last six years (T. 231). Karen Allen, Mr. Cuch's trial attorney filed a notice of appeal on his behalf.<sup>1</sup>

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<sup>1</sup>The trial attorney initially filed the appeal with the proposal that two other issues be raised on appeal; 1) no Native Americans were on the jury panel and 2) that there was a spouse to a police officer in the general jury pool. The record does not support that the defense used any of its challenges to remove the police officer's spouse, therefore the record does not support any possible allegation. Moreover, the record does not address the nationality of the jurors and therefore even if the case law supported that such an argument was viable—there is no record to draw from in which to brief the subject (it is mere speculation as to the race of the jurors).

### SUMMARY OF ARGUMENT

There was insufficient evidence to show that Mr. Cuch was under the influence of marijuana to the point that he was incapable of operating the motor vehicle in a safe manner.

To support his argument Mr. Cuch must marshal all of the evidence to support the jury verdict and then show why the marshaled evidence is still insufficient to logically support the conviction.

Mr. Cuch argues that he was pulled over for changing lanes without signaling and for the license plate not being fully illuminated. Those two elements although clearly violations of the law are not a “driving pattern” to show unsafe operation of a motor vehicle.

Mr. Cuch argues that even if the jury properly determined that he had ingested marijuana smoke—either intentionally or unintentionally—that the amount was insufficient to render him incapable of operating a motor vehicle in a safe manner.

It is the duty of the state to show beyond a reasonable doubt why Mr. Cuch should be convicted. They had to show the jury that Mr. Cuch had enough marijuana in his system to render him unsafe behind the wheel. The trooper that initiated the stop failed to present sufficient evidence to show that Mr. Cuch was operating the motor vehicle in an unsafe manner.

Additionally, the DRE failed to establish how marijuana could render the driver unsafe. As the jury had no evidence before it to find Mr. Cuch operated the truck unsafely there is insufficient evidence to support the conviction.

Mr. Cuch respectfully requests that his conviction be vacated on the basis of insufficient evidence.

## ARGUMENT

*THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION OF DRIVING UNDER THE INFLUENCE OF DRUGS AS THE STATE FAILED TO ESTABLISH THAT MR. CUCH WAS DRIVING UNSAFELY.*

Utah State Code provides

41-6-44 Driving under the influence of alcohol, drugs

(2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person

(I) has sufficient alcohol in his body that a chemical test given within two hours of the alleged operation or physical control shows that the person has a blood or breath alcohol concentration of 08 grams or greater, or

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug **to a degree that renders the person incapable of safely operating a vehicle** (Emphasis added )

Mr Cuch has the burden of marshaling all the evidence that supports his conviction—including all reasonable inferences from the evidence and then show why it does not support his conviction State v Coonce, 36 P 3d 533 (Utah App 2001)

Mr Cuch admits that the trooper had a basis to stop him—he changed lanes without signaling (it is unclear if this lane change occurred prior to the officer pulling Mr Cuch over or if it occurred when the officer activated his overhead lights and Mr Cuch was attempting to get to the right hand lane to pull over) and his license plate illumination light was apparently not illuminating the plate Although no citations were given for the light bulb not illuminating the plate, no citation or warning was given for the lack of signaling for the lane change either No

where in trooper Stradinger's testimony did he state that the lane change was unsafe, cause other cars to alter their driving to avoid a collision or in anyway caused him concern that Mr Cuch was operating the car in an unsafe manner. It was merely a basis to stop Mr Cuch along with the non-illuminating bulb for the license plate.

Mr Cuch admits the initial stop was legal. See, State v Preece, 971 P 2d 1 (Utah App 1998), " . "a police officer is constitutionally justified in stopping a vehicle if the stop is 'incident to a traffic violation committed in the officers' presence '" State v Lopez, 873 P 2d 1127, 1132 (Utah 1994) (quoting State v Talbot, 792 P 2d 489, 491 (Utah Ct App 1990)) Accord United States v Parker, 72 F.3d 1444, 1449 (10th Cir 1995) (holding that because defendants committed traffic violations under Utah Code Ann. §§ 41-6-61(1) and 41-6-69(1)(a), officer had reasonable articulable suspicion to stop defendants) ”

However, there a big difference from an articulated reason for a stop (license plate not illuminated) to operating a vehicle unsafely due to the concentration of drugs in the body of the driver. Trooper Stradinger did not articulate any evidence about Mr Cuch's operation of the vehicle in an unsafe manner that caused the stop. The only evidence about Mr Cuch's operation of the truck is that he did not pull over quickly and that he did not signal when he changed lanes. However, the state did not expand on this line of questioning in the trial. The only mention of Mr. Cuch's operation of the truck was time it took to pull over and the lack of signal. There was no evidence presented to link the lane change or time it took to stop to any testimony that such action was unsafe and caused by the presence of marijuana in the driver's system.

At issue then is if this is enough evidence to support a conviction that Mr Cuch was under the influence of marijuana to the degree that he operated the truck in an unsafe manner when the

troopers did not tie together the use of drugs and the driving pattern as being unsafe

Mr Cuch must not only marshal all of the evidence but must provide reasonable inference therefrom. It is reasonable to conclude that Mr Cuch did not signal and that he took a bit longer to pull over than the trooper thought he should. However, there was not testimony that marijuana would cause the operator of a vehicle to fail to see the lights of the trooper or to comply more quickly.

In support of the marshaling requirement Mr Cuch provides the following citations to the record. The trooper stated that when he activated his lights, Mr. Cuch pulled over (T 75). Trooper Stradinger pulled Mr Cuch over and thought that other drivers had pulled over more quickly (T 75). The trooper saw the passenger throw something out the window (T 75). The trooper detected the odor of alcohol from the truck (T 77). The trooper asked who had been drinking and pulled Mr Cuch from the truck (T 77). The trooper later testified that he could no longer smell the alcohol when Mr Cuch exited the truck (T 94). Mr Cuch passed the field sobriety tests (T 78). Mr Cuch told the trooper that the passenger had been drinking and that was why he was taking him home (T 77-79). Trooper Stradinger did not believe the passenger was being honest with him about his identity so he held Mr Cuch and the passenger there until a Tribal police officer arrived and confirmed the identity of the passenger (T 80). Trooper Stradinger ran the passenger and found he had warrants and he arrested the passenger (T 80). The trooper then ran Mr Cuch for warrants (T 80). It is at this point that counsel asserts that the trooper should have let Mr Cuch go. Instead he held MR Cuch and ran him for warrants even though he passed the field sobriety tests and no marijuana was found on him, was thrown from the car by him nor was there any odor of marijuana found in the car (T 97).



In order to establish that Mr. Cuch was driving in an unsafe manner he must establish that Mr. Cuch operated the car unsafely to a degree that he was impaired. However, there is scant testimony about the operation of the motor vehicle. As set forth above, the only testimony about the operation is that he failed to signal and it took him a bit of time to move over to the right lane to pull over. Mr. Cuch testified it was because there were cars slowing down in the right lane and he could not get over. The trooper, who sat through Mr. Cuch's testimony did not dispute Mr. Cuch's explanation when he was brought back to testify as a rebuttal witness (T. 94-98). Therefore, without trooper Stradinger's testimony to determine if Mr. Cuch was driving unsafe, we are left only with the testimony of Mr. Cuch as to why he changed lanes and why it took him a bit longer to move tot he right lane.

In fact, Mr. Cuch testified that he was in the passing lane driving Mr. Murray home when he saw a car come up fast behind him. He tried to change lanes to get out of its way but the cars in the travel lane slowed down and he could not get back over. The cars saw the troopers lights and everyone slowed down so that getting over to the right lane was difficult (T. 152). The fact that drivers at 2:00 a.m. saw a fast approaching police car and they all slowed down is much more reasonable inference. Additionally, Mr. Cuch testified that it took him some time to get over to the right lane to pull over. He was nervous and scared and it is also reasonable to infer that he forgot to signal in the hurry to get to the right lane. Mr. Cuch knew he had a warrant and he was scared he was going to get arrested for the warrant (T. 152). It is much more likely that Mr. Cuch was scared about being pulled over, scared about being arrested for his warrant and concerned that he would go to jail and forgot to signal than he was so high on marijuana that he could not operate his truck safely.

There is no testimony from trooper Stradinger that Mr. Cuch operated the motor vehicle in an unsafe manner. The Utah Code requires that the state prove not only that Mr. Cuch had marijuana in his system but that it made him operate the vehicle in an unsafe manner. See statute cited above. There was no evidence presented in trial that Mr. Cuch drove in an unsafe manner. Although Mr. Cuch marshaled all of the evidence that supported his conviction—there was little or no evidence about his operation of the truck. What little there was is marshaled above but it fails to show how he was operating the truck unsafely because of his ingestion of marijuana.

“We reverse the jury’s verdict in a criminal case when we conclude as a matter of law that the evidence was insufficient to warrant conviction.” State v. Smith, 927 P.2d 649, 651 (Utah Ct.App.1996), cert. denied, 937 P.2d 136 (Utah 1997).

Mr. Cuch respectfully requests that court review the evidence in this case and determine if there was sufficient evidence in this case to convict him a DUI charge. He asserts that he had inhaled marijuana smoke, second hand or otherwise but that it did not render him unsafe to drive his truck. He further asserts that the more reasonable charge would have been a possession of paraphernalia or possession of marijuana charge but that the trooper and the prosecutor decided not charge him that way because of his prior record. They knew the only felony they could get him with was a DUI so they charged him that way rather than with simple possession which would have been a class A or class B misdemeanor(attempted possession).

In reviewing the evidence in jury trial conviction, the Court of Appeals must “review the record facts in a light most favorable to the jury’s verdict and recite the facts accordingly.” State v. Brown, 948 P.2d 337, 339 (Utah 1997). The Appeals Court must “reverse the jury’s verdict in a criminal case when we conclude as a matter of law that the evidence was insufficient to warrant

conviction.” State v. Smith, 927 P.2d 649, 651 (Utah Ct.App.1996), cert. denied, 937 P.2d 136 (Utah 1997). The Appeals Court should reverse only if the evidence is so " 'inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime.' " State v. Harman, 767 P.2d 567, 568 (Utah App. 1989). (quoting State v. Petree, 659 P.2d 443, 444 (Utah 1983)); *accord* State v. Bradley, 752 P.2d 874, 876 (Utah 1985). But to affirm the jury’s verdict, the Court of Appeals “must be sure the State has introduced evidence sufficient to support all elements of the charged crime. *Id.*


Here the state introduced evidence that Mr. Cuch did not signal when he changed lanes and he took time to get safely over to the right lane when he saw the police officer behind him. The state put on evidence that Mr. Cuch had ingested marijuana. However, the state failed to put on evidence to show that the marijuana caused Mr. Cuch to operate the vehicle in an unsafe manner. There was no testimony that the failure to signal caused an unsafe lane change. There is no testimony or evidence to show that Mr. Cuch, in taking time to safely get into the right lane, was an unsafe motor vehicle maneuver. In summary, although the state showed a driving violation in failing to signal. And the state showed Mr. Cuch had marijuana in his system; they failed to tie the two elements together and show how Mr. Cuch was not able to safely operate his truck.

Mr. Cuch asserts that his conviction for this charge based on the evidence presented by the State at trial is precisely the sort of “inconclusive or inherently improbable” evidence that “reasonable minds must have entertained a reasonable doubt that the defendant committed the crime.” State v. Harman, 767 P.2d 567, 568 (Utah App. 1989). If this is case, then the conviction based on such evidence should be overturned by the Appeals Court.

### CONCLUSION

Mr Cuch respectfully requests that this Court vacate his conviction on the basis that the scope of the initial stop and detention had been exceeded by trooper Stradinger and the evidence of the DRE should have then been suppressed. If the evidence had been suppressed Mr Cuch would not have been convicted of a felony DUI.

RESPECTFULLY SUBMITTED this 17 day of June, 2002

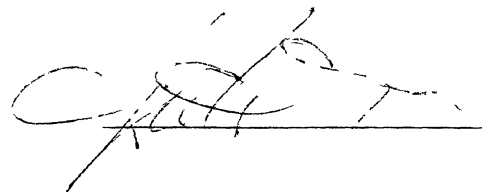
  
\_\_\_\_\_  
JULIE GEORGE  
Attorney for Appellant

### MAILING CERTIFICATE

I hereby certify that I hand-delivered or mailed, first class postage prepaid, a true and correct copy of the foregoing Brief to

LAURA DUPAIX  
ASSISTANT UTAH ATTORNEY GENERAL  
CRIMINAL APPEALS DIVISION  
P O BOX 140854  
SALT LAKE CITY, UTAH 84114-0854

DATED THIS 17 DAY OF June 2002

  
\_\_\_\_\_

## **ADDENDA**

## ADDENDUM A

### JUDGEMENT & COMMITMENT

HERBERT Wm. GILLESPIE #1191  
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FILED  
DISTRICT COURT  
DUCHESNE COUNTY, UTAH  
DEC 21 2001  
BY JOANNE WILKIE, CLERK  
DEPUTY

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH  
DUCHESNE COUNTY, ROOSEVELT DEPARTMENT**

---oooOooo---

STATE OF UTAH,	:	<b>JUDGMENT AND</b>
	:	<b>ORDER</b>
Plaintiff,	:	
vs.	:	
	:	Criminal No. 015000015
KELCEY WILLIAMS CUCH,	:	
Defendant.	:	Judge A. Lynn Payne

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**DRIVING UNDER THE INFLUENCE OF DRUGS (WITH PRIOR CONVICTIONS) - A  
THIRD DEGREE FELONY**

The above-entitled case came before the Court for Sentencing on Thursday, December 6, 2001, the Honorable Judge A. Lynn Payne, presiding. The defendant was present and was represented by his attorney, Karen Allen. The State of Utah was represented by Herbert Wm. Gillespie, Duchesne County Attorney. Statements were made by counsel for the parties and the defendant.

NOW THEREFORE, based upon the file and record herein, it is hereby ORDERED,  
ADJUDGED AND DECREED as follows:

That the defendant has been convicted by a Jury of the offense of **Driving Under the Influence of Drugs (With Prior Convictions), a Third Degree Felony**, in violation of Section 41-6-44UCA (1953) as amended.

That for the offense of **Driving Under the Influence of Drugs (With Prior Convictions), a Third Degree Felony**, it is hereby ordered that the defendant is sentenced to serve an indeterminate term of not to exceed five (5) years in the Utah State Prison and to pay a fine in the sum of \$1,000.

The foregoing prison sentence is suspended and the defendant is placed on supervised probation for a period of thirty-six (36) months upon the following terms and conditions:

1. The defendant shall sign the standard agreement with Adult Probation and Parole and abide by the terms and conditions of the agreement.

2. The defendant shall keep this Court and his probation officer informed of his current address at all times and report to the Court whenever he is requested to do so.

3. The defendant shall not violate any laws.

4. The defendant shall not possess or consume alcohol or be where alcohol is being possessed or consumed or is the chief item of order.

5. The defendant shall not possess or consume illegal controlled substances or be where illegal controlled substances are being possessed or consumed.

6. The defendant shall successfully complete any counseling recommended by Adult Probation and Parole.

7. The defendant shall be subject to random blood or urine drug testing, up to twice per month, at the discretion of Adult Probation and Parole.



8. The defendant shall perform up to four (4) hours per day community service at the direction of Adult Probation and Parole if he is not enrolled in school full time or in school part time and working part time.

9. The defendant shall serve six (6) months in the Duchesne County Jail. After the defendant has served 120 days, he may be released directly into an in-patient treatment program if a program is recommended by Adult Probation and Parole.

10. The defendant shall report to the Duchesne County Jail no later than Friday, December 14, 2001, to begin this period of incarceration.

11. The defendant shall successfully complete an anger management class as directed by Adult Probation and Parole.

12. The defendant shall pay the fine on terms set forth by Adult Probation and Parole. The defendant may perform community service in lieu of the fine if it is approved by Adult Probation and Parole.

13. The defendant shall carry with him at all times the offender identification card given to him by Adult Probation and Parole and present it to any law enforcement officer who asks for identification or driver's license.

14. The defendant shall pay a \$300 recoupment fee to Duchesne County for his indigent counsel expenses.

15. The defendant shall take Antibuse at the discretion of Adult Probation and Parole if he is medically able to take it.

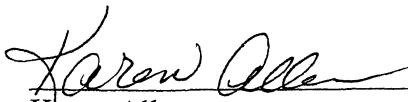
16. The defendant shall be released from the Duchesne County Jail for a 24-hour period for Christmas 2001. The defendant shall return to the Duchesne County Jail as directed by the jail personnel.

DATED this 20 day of December, 2001.

BY ORDER OF THE COURT

  
\_\_\_\_\_  
A. LYNN PAYNE  
DISTRICT COURT JUDGE

Approved as to form:

  
\_\_\_\_\_  
Karen Allen  
Attorney for Defendant

State of Utah vs **Kelcey Williams Cuch**  
Case No. 015000015

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 11<sup>th</sup> day of December, 2001, I delivered a true and correct copy of the foregoing proposed Judgment and Order to the attorney for the defendant, at:

Karen Allen  
Attorney at Law  
PO Box 409  
Duchesne UT 84021

by depositing the same in her box at the Duchesne County Justice Center, Duchesne, Utah.

Alvira Mitchell  
Legal Assistant

## ADDENDUM B

NOTICE OF APPEAL

**KAREN ALLEN #7454**  
Attorney for the Defendant  
P.O. Box 409  
Duchesne, UT 84021  
Telephone: (435) 738-2432  
Fax: (435) 738-2431

JAN 4 2002  
JANNE A. KUTT CLERK  
*CA*

**In the Eighth Judicial District Court of the State of Utah  
Duchesne County - Roosevelt Department**

**KA 01-059**

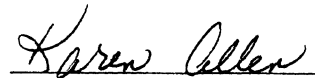
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THE STATE OF UTAH,	:	<b>NOTICE OF APPEAL</b>
Plaintiff,	:	
vs.	:	Criminal No. 015000015
<b>KELCEY WILLIAMS CUCH,</b>	:	
Defendant.	:	Judge A. Lynn Payne

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COMES NOW the Defendant, KELCEY WILLIAMS CUCH, and serves notice of his intent to appeal the decision of the Jury which was settled in its entirety on October 2, 2001. This hearing concluded the matter wherein the Defendant was found guilty to the charges of Driving under the Influence of Drugs (with prior convictions), a third degree felony. The Defendant further specifies that he appeals from the decision of the Jury verdict on the basis that the Court improperly admitted matters into evidence to the issues and further that the Court did not correctly apply the law to the facts presented at trial.

DATED this 3<sup>rd</sup> day of January, 2002.

  
KAREN ALLEN  
Attorney for Defendant

**CERTIFICATE OF MAILING OR DELIVERY**

I hereby certify that I mailed or delivered a true and correct copy of the foregoing Entry of Appearance and Request for Discovery to:

Herbert Gillespie  
Duchesne County Attorney  
P.O. Box 206  
Duchesne, Utah 84021

Mr. Kelcey W. Cuch  
P. O. Box 94  
Ft. Duchesne, UT 84026

first-class postage prepaid, this 3<sup>rd</sup> day of January, 2002.

KA  
Sandi Mott